

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

v.

CR 99-091 ML

JOSE A. DIAZ

MEMORANDUM AND ORDER

This matter is before the Court on the order of the First Circuit Court of Appeals directing this Court to determine whether Defendant, Jose A. Diaz ("Defendant") has timely filed a notice of appeal of this Court's denial of his motion to reduce sentence.

Background and Analysis

On July 12, 2011, Defendant filed a notice of appeal pro se of this Court's denial, on June 27, 2011, of his motion to reduce sentence. Defendant's notice of appeal, however, was due by July 11, 2011. See generally Fed. R. App. P. 4(b)(1) (in a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the entry of the order being appealed); see also Fed. R. App. P. 26 (computation of time). Consequently, as noted by the First Circuit, the notice of appeal facially appeared to have been filed out of time.

At the time of the filing of his notice of appeal, however, Defendant was incarcerated in Florida. If an inmate

confined in an institution files a notice of appeal in . . . a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-

class postage has been prepaid.

Fed. R. App. P. 4(c)(1); see generally United States v. Correa-Torres, 326 F.3d 18 (1st Cir. 2003).

Defendant's notice of appeal is undated and includes no declaration or notarized statement. In this instance, however, based on these particular circumstances, the Court gives Defendant the benefit of the doubt as it seems entirely plausible that Defendant gave his notice of appeal to prison authorities for mailing on or before July 11, 2011, and this Court received his notice of appeal on July 12, 2011.

Conclusion

The Court finds that Defendant's notice of appeal was timely filed pursuant to Fed. R. App. P. 4(c)(1).

SO ORDERED.

/s/ Mary M. Lisi
Mary M. Lisi
Chief United States District Judge
August 4, 2011.